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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130702583-3583-01]

RIN 0648-BD40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement an omnibus amendment to three of the Mid-Atlantic Fishery Management Council's fishery management plans. The omnibus amendment proposes to change the accountability measures for the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass recreational fisheries. The proposed measures are intended to more appropriately address accountability in the recreational fisheries.

DATES: Submit comments on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: A draft environmental assessment (EA) was prepared for the Recreational Accountability Measures Omnibus Amendment that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Recreational AM Omnibus Amendment, including the draft EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-

Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901.

These documents are also available online at <http://www.mafmc.org>.

You may submit comments on this document, identified NOAA-NMFS-2013-0108, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0108, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Fax: (978) 281-9135, Attn: Comments on Recreational Omnibus Amendment, NOAA-NMFS-2013-0108.
- Mail and Hand Delivery: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.
Mark the outside of the envelope: “Comments on Recreational Omnibus Amendment.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

In 2011, the Council adopted, and NMFS implemented, an Omnibus Annual Catch Limit (ACL) and Accountability Measures (AM) Amendment to establish AMs for the commercial and recreational fisheries that catch Atlantic mackerel, butterfish, Atlantic bluefish, summer flounder, scup, black sea bass, golden tilefish, ocean quahog, and Atlantic surfclams. The AMs for the recreational fisheries included in-season closure authority for the Regional Administrator when landings were known to have reached the recreational harvest limit (RHL), and pound-for-pound payback of any overage. In 2012, the recreational black sea bass fishery significantly exceeded its RHL. The pound-for-pound payback requirement would drastically limit the recreational black sea bass fishery in fishing year 2014. As a result, the Council decided to review the recreational fishery AMs to determine if a different approach to recreational accountability would be more appropriate. Specifically, the Council wanted to develop AMs that took into account the status of the stock and the biological consequences, if any, resulting from a recreational sector overage.

Proposed Measures

These proposed regulations implementing these measures were deemed by the Council to be consistent with the amendment, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a letter, dated August 20, 2013, from the Council Chairman to the NMFS Regional Administrator.

1. Annual Catch Target (ACT) process. The Council considered modifying the ACT process to either explicitly consider or require a reduction from the recreational ACL that would account for the uncertainty in recreational catch estimates. However, the Council decided, and this rule proposes, no changes to the existing language that states that an ACT may be reduced from ACL to account for uncertainty, but does not require a reduction or that the Monitoring Committee highlight the uncertainty in the recreational estimate. The Council determined that the current approach retains the highest degree of flexibility in its specifications setting process.

2. In-Season Closure Authority. This rule proposes to remove the in-season closure authority for the affected recreational fisheries. The Council considered maintaining the closure authority as it currently is (based only on known information), or allowing the Regional Administrator to use projections of recreational landings to determine if a closure is necessary. The delay in receiving recreational landings information, combined with regional differences in the recreational fisheries and the resultant disproportional impacts of an in-season closure, led the Council to recommend removing this authority.

The Council also considered granting the Regional Administrator the ability to modify the recreational management measures (bag limit, minimum fish size, or season) during the fishing year, but decided against that alternative because it was difficult to implement, especially in fisheries operating under conservation equivalency. Conservation equivalency allows each state to establish its own recreational management measures to achieve its state harvest limit partitioned by the Atlantic States Marine Fisheries Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. This configuration of regulations makes implementing in-season changes to management measures difficult.

3. Incorporate catch estimate uncertainty in ACL overage determination. The Council recommends comparing the 3-year moving average of the lower confidence interval of the recreational catch estimate to the 3-year moving average of the recreational ACL to determine if an overage has occurred. The Council considered maintaining the current 3-year average of the catch point estimate for the summer flounder, scup, and black sea bass fisheries or using only a single year's point estimate compared to a single year's ACL for all five recreational fisheries. (Note, Atlantic mackerel and bluefish currently use only a single-year comparison.) The Council also considered using a multi-year approach that would trigger an AM only if more than one overage occurred in a 4-year period.

NMFS notes that there are concerns regarding the Council's recommended approach. The Council's draft document stated that using the lower confidence interval is only appropriate if the stock is in a "healthy condition." The discussion during the Council's June meeting, however, did not address this requirement. The Council's amendment clarifies that if stock status is unknown, if overfishing is occurring, or if the stock is overfished, then the point estimate of the recreational catch would be used. In addition, there is concern that using the lower confidence interval may not meet the requirement in National Standard 2 of the Magnuson-Stevens Act to use the best scientific information available. While there is uncertainty in the recreational catch estimate and there is a degree of probability that the actual catch is lower than the point estimate, there is an equal degree of probability that the actual catch is above the point estimate. Using the point estimate mitigates the risk of the actual catch being significantly above or below the estimate. However, using the lower bound of the confidence interval ensures that the actual catch would almost always be higher than the value used to determine whether an overage occurred.

Accordingly, NMFS seeks comments on whether it should approve the measure that would determine overages in these recreational fisheries by using the 3-year moving average of the lower confidence interval of the recreational catch estimate, defined by the Council as the point estimate less one standard error, for “healthy” stocks.

4. Incorporate stock status in AM determination. This rule proposes a system of AMs that would result in a payback if: (1) the stock is overfished (i.e., the most recent estimate of biomass (B), is below the threshold, or $B/B_{MSY} < 1/2$), under a rebuilding plan, or if stock status is unknown, and the ACL was exceeded; or (2) biomass is below the target, but above the threshold (i.e., $1/2 < B/B_{MSY} < 1$), and the acceptable biological catch (ABC) is exceeded. Otherwise, adjustments to the management measures would be used as an AM. This adjustment would be in addition to any necessary adjustments needed to meet that year’s new catch limits.

The Council currently adjusts its management measures to achieve, but not exceed, the next year’s catch limit based largely on what the fishery caught in the current year. If the next year’s catch limit is higher than this year’s catch, then measures may be liberalized. Conversely, if the next year’s catch limit is lower than this year’s catch, then measures must be tightened. These adjustments happen independently of any catch limit overage. The Council intends for the overage to result in a “performance review,” such that if an overage did occur, an adjustment to the expectation that those measures would achieve, but not exceed, the target would be incorporated into the coming year’s measures determination. This would result in measures potentially being less liberal, or tightened more, than they otherwise would have been had the overage not occurred.

The Council also considered different combinations of stock status and overage threshold (ABC only, or the overfishing limit (OFL)) to determine when, if at all, a payback was necessary.

5. Scaled payback calculation. The Council recommends that the amount of a payback (if determined to be appropriate under #4, above) be scaled relative to the biomass. That is, the payback would be the product of the difference between the catch and the ACL (i.e., the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimates of B_{MSY} and current biomass, divided by $\frac{1}{2} B_{MSY}$.

This would result in a smaller payback the closer the estimated biomass is to the target and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize the economic impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. This scaling would not be used if the stock was overfished (i.e., if $B/B_{MSY} < \frac{1}{2}$), or if the stock status is unknown. In those cases, the payback would be equal to the full amount of the overage. In addition, if the stock is above the target (i.e., $B/B_{MSY} > 1$), then the payback would be zero.

Classification

Except for the measure identified as being a concern, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, the Atlantic Bluefish FMP, the Summer Flounder, Scup, and Black Sea Bass FMP, the Magnuson-Stevens Act, and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not

significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of the Recreational AM Omnibus Amendment measures in conjunction with the environmental assessment analyses. The Council concluded, and NMFS agrees, that the formal procedures for addressing recreational accountability measures proposed by the Recreational AM Omnibus Amendment are administrative, as they are entirely a description of process. While the Recreational AM Omnibus Amendment provides detailed descriptions of the frameworks for how the AMs will function, the action contains no actual application of those AMs for any of the Mid-Atlantic recreational fisheries. As a result, there are no potential economic impacts to evaluate. Implementation of adjustments to catch limits or management measures with measurable impacts will occur and be analyzed in future actions. As the measures proposed by the Recreational AM Omnibus Amendment are utilized in future actions, the specific impacts resulting from the application of those measures will be evaluated through the Council's specification processes for each FMP.

The Council-conducted analyses identified 714 unique fishing entities in the Northeast Region that would likely be affected by the future implementation of the AMs. However, given the administrative aspects of the proposed measures, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities given the aforementioned description of the administrative processes proposed by the Recreational AM Omnibus Amendment.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013, rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 12, 2013.

Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,
performing the functions and duties of the Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.24, paragraphs (b)(2) through (b)(5) are revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(2) Mackerel commercial landings overage repayment. If the mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) Non-landing AMs. In the event that the ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial ACT was exceeded will be deducted from the following year's commercial ACT, as a single-year adjustment.

(4) Mackerel recreational AMs. If the mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

(i) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B

or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate caused the most recent year's ACL to be exceeded will be deducted from the following year's recreational ACT, as a single-year adjustment.

(ii) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the ACL has been exceeded. If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(1) Adjustment to ACT. If an adjustment to the following year's ACT is required, then the recreational ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient specified in paragraph (b)(4)(ii)(B)(2) of this section.

(2) Payback coefficient. The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(iii) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(5) Mackerel ACL overage evaluation -- (i) If the stock is not overfished and overfishing is not occurring. The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the lower bounds of the confidence intervals, defined for each year as the point estimate less one standard error, of the total recreational catch estimates (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

(ii) If the stock is overfished or overfishing is occurring. The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the point estimates of the total recreational catch estimates (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act,

through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

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3. In § 648.103, paragraph (b)(3) is added and paragraphs (c), (d), and (e) are revised to read as follows:

§ 648.103 Summer flounder accountability measures.

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(b) * * *

(3) Non-landing accountability measure. In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL Evaluation -- (1) If the stock is not overfished and overfishing is not occurring. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector

ACLs; the average of the lower bounds of the confidence interval of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be compared to the preceding 3-year average of the recreational sector ACLs.

(2) If the stock is overfished or overfishing is occurring. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is

greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will

be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

4. In § 648.123, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

§ 648.123 Scup accountability measures.

* * * * *

(b) Non-landing accountability measure. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL Evaluation -- (1) If the stock is not overfished and overfishing is not occurring. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be compared to the preceding 3-year average of the recreational sector ACLs.

(2) If the stock is overfished or overfishing is occurring. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as

soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

5. In § 648.143, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

§ 648.143 Black sea bass Accountability Measures.

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(b) Non-landing accountability measure. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL Evaluation -- (1) If the stock is not overfished and overfishing is not occurring. The recreational sector ACL will be evaluated based on a 3-year moving average

comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be compared to the preceding 3-year average of the recreational sector ACLs.

(2) If the stock is overfished or overfishing is occurring. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY}

threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of

the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

6. In § 648.163, paragraphs (a), (d), and (e) are revised to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) ACL overage evaluation --(1) If the stock is not overfished and overfishing is not occurring. The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the lower bounds of the confidence intervals, defined for each year as the point estimate less one standard error, of the total recreational catch estimates (landings and dead discards). Both landings and dead discards

will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the FEDERAL REGISTER, by May 15 of the fishing year in which the deductions will be made.

(2) If the stock is overfished or overfishing is occurring. The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the point estimates of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

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(d) Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the

most recent year's ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the ACL has been exceeded. If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors. If the Bluefish Monitoring Committee determines that the ACL overage was not the result of the landings transfer, the recreational AMs described in paragraph (d) of this section will be implemented.

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